

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **Crl.A.No.100-DB of 1998**
DATE OF DECISION: October 29, 2007

BALWINDER SINGH @ CHUKA

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MR. JUSTICE MOHINDER PAL.**

**PRESENT: MR. GAUTAM DUTT, AMICUS CURAIE FOR THE APPELLANT.
MR. V.K. JINDAL, ADDL.A.G., PUNJAB.**

ASHUTOSH MOHUNTA, J.

This appeal has been filed against the judgement and order of sentence dated 20.1.1988 passed by learned Addl. Sessions Judge, Barnala vide which the appellant-accused has been convicted under Section 302 IPC and has been sentenced to to undergo rigorous imprisonment for life and to pay a fine of Rs.2000/- and in default to further undergo R.I. for three months.

Briefly, the facts of the case are that on 25.10.1995, at about 11.00 P.M. PW-5 Gurjant Singh came to house of PW-4 Avtar Singh, complainant at village Nainewal and told him that his brother Beant Singh (deceased) has not returned home. Thereafter, PW-4 Avtar Singh and PW-5 Gurjant Singh started search for the deceased. When they reached near the house of accused-appellant Balwinder Singh they heard some cries coming from inside the house of the appellant. The gate of the house of the appellant was open and electric bulb was also lighting in the house. On hearing the cries, PW-4 Avtar Singh and PW-5 Gurjant Singh went inside the house of the appellant and found that Beant Singh (deceased) was lying

in the courtyard of the house of the accused and was raising cries. At that time the appellant-accused Balwinder Singh was holding a Ghotna (a thick wooden stick used for grinding salt, chillies, etc.) in his hand and was giving 'Ghotna' blows to the deceased hitting him on his head and forehead. The appellant-accused's wife Joginder Kaur was holding the deceased from his legs. On an alarm raised by PW-4 Avtar Singh and PW-5 Gurjant Singh, the appellant-accused and his wife went away from the spot with their weapon. According to the complainant, the motive for the crime was that the deceased Beant Singh who was unmarried had illicit relations with Joginder Kaur wife of the accused Balwinder Singh and it was due to this reason that the accused murdered Beant Singh.

Thereafter, PW-4 Avtar Singh, PW-5 Gurjant Singh, Kaur Singh, Member Panchayat and Smt. Ishar Kaur, mother of the deceased arranged some conveyance and rushed the deceased to community Health Centre, Bhadaur at about 11.30 p.m. PW-1 Dr. S.K. Garg, medically examined the deceased and seeing the seriousness referred the deceased to Civil Hospital, Barnala. An informatory chit Ex.PA was also sent by PW-1 Dr. S.K. Garg in that regard to SHO, Police Station Bhadaur. On reaching the Civil Hospital, Barnala on 26.10.1995 at about 1.00 a.m., Beant Singh (deceased) was pronounced dead by Dr. Ravinder Bansal, PW-2, Civil Hospital, Barnala. A chit Ex.PB was sent by the PW-2 Dr. Ravinder Bansal, to SHO Police Station, Barnala. However, on receipt of chit Ex.PA from Community Health Centre, Bhadaur, SI Darshan Singh of Police Station Bhadaur rushed to Civil Hospital, Barnala and came to know about the death of Beant Singh. A statement Ex.PF of PW-4 Avtar Singh was recorded on the basis of which FIR No.68/95 Ex.PF/2 under Section 302/34

IPC was registered against the accused at Police Station, Bhadaur. Post mortem of the deceased was got conducted by Dr. Rajinder Singh on 26.10.1995 at about 2.00 P.M., and he opined that the death was due to shock and haemorrhage which was sufficient to cause death in the ordinary course of nature. Blood stained earth was lifted from the spot by PW-18 SI Darshan Singh vide recovery memo Ex.PG.

Several raids were conducted at the house of the accused but they were untraceable. Thereafter, on 29.10.1995 when PW-18 SI Darshan Singh and other police officials were returning from the raid conducted at the house of the accused, they met the accused near the bridge of the canal minor in the area of Bhadaur and were arrested. The accused Balwinder Singh was interrogated who made a disclosure statement to the effect that he had kept concealed the 'Ghotna' near the drain in the area of Village Nainewal and offered to get the same recovered and thumb marked his statement.

To prove the veracity of allegations, the prosecution examined Dr. S.K. Garg as PW-1, Dr. Ravinder Kumar Bansal as PW-2, Dr. Rajinder Singh Grewal as PW-3, Avtar Singh (complainant-eye witness) as PW-4, Gurjant Singh, eye witness as PW-5, ASI Jagraj Wireless Operated as PW-6, Darhsan Singh, Halqa Patwari as PW-7, SI Darshan Singh as PW-8. Report of Chemical Examiner Ex.PN and Serologist Ex.PT and affidavits of witnesses were also tendered.

The statements of the accused were also recorded under Section 313 Cr.P.C. in which they denied the prosecution allegation and pleaded false implication and not guilty and claimed trial. However, they did not lead any evidence in their defence.

The trial Court on the basis of the evidence led, held that there is nothing to disbelieve the presence of Avtar Singh PW-4 and Gurjant Singh PW-5, who had witnessed the occurrence. However, the trial Court acquitted the accused Joginder Kaur by giving her benefit of doubt.

PW-1 Dr. S.K. Garg, Medical Officer, has stated that the deceased was brought to the Health Centre in an unconscious state and general condition of the deceased was serious. The patient was having laboured respiration. The deceased was given necessary first aid and was referred to Civil Hospital, Barnala for further treatment. PW-2 Dr. Ravinder Bansal stated that when the deceased was brought in the hospital on 26.10.1995 at 1.00 a.m., he had already expired. PW-3 Dr. Rajinder Singh Grewal, SMO, Civil Hospital, Barnala who conducted post mortem examination on the body of the deceased has stated that the dead body was smeared with blood and found the following injuries on the dead body:-

- “1. Lacereated would on the left eye 3 cm x 1 cm in size and the skull bone below the injury was fractured.*
- 2. Lacerated would over right eye 3 cm x 1 cm in size and the skull bone below the injury was fractured.*
- 3. lacerated would over left ear pinna 3 cm in size and ear pinna was separated into two pieces.”*

PW-3 opined the cause of death to be shock and hemorrhage due to injury Nos.1 & 2 which were sufficient to cause death in an ordinary course of nature. He further found that the stomach was healthy and contained 250 gms. of semi digested food material. Small intestines were

healthy and contained gases and large intestines were also healthy and contained gases and faecle matter.

PW-4 Avtar Singh, complainant, eye witness has very categorically stated in his statement that while searching for Beant Singh when he reached near the house of the accused-appellant, he heard an alarm 'Marta-Marta'. The main door of the house of the accused was open and one electric bulb was emitting light. He found that Beant Singh was lying on the ground and was shouting and accused Balwinder Singh was inflicting injuries to him with Ghotna on his head. Joginder Kaur wife of the accused was holding the legs of Beant Singh. He further stated that on going inside the house and asking them to stop inflicting injuries, the accused ran away with the wooden log. Thereafter with the help of Kaur Singh and his mother Isher Kaur, Beant Singh was taken to hospital and from where Kaur Singh and Isher Kaur had further removed him to Civil Hospital, Barnala and in the morning found that Beant Singh had expired. PW5 Gurjant Singh also reiterated the same facts as given by PW-4 Avtar Singh and was also the eye witness to the fatal incident. PW-8 SI Darshan Singh had stated that on 26.10.1995, he received a ruqa from Civil Hospital, Bhadaur about the arrival of Beant Singh as injured and further about referring him to Civil Hospital, Barnala. In response to the ruqa he went to the Civil Hospital, Barnala with some other police officials. The dead body of Beant Singh was lying there. Then he recorded the statement of PW-4 Avtar Singh Ex.PF which was duly signed by PW-4 Avtar Singh. After registration of FIR on the basis of the statement made by PW-4 Avtar Singh, the accused were traced out and arrested. On interrogation accused Balwinder Singh made disclosure statement which was thumb marked by him and he got

recovered the 'Ghotna'.

Learned counsel for the appellant has contended that there is delay of 8/9 hours in lodging the FIR. It has been contended that the incident took place on 25.10.1995 at about 11.00 p.m., whereas the FIR in this case was registered on 26.10.1995 at 9.15 a.m. This delay has not been explained by the prosecution.

After the occurrence took place on 25.10.1995, at about 11.00 p.m., the deceased Beant Singh was immediately rushed to Community Health Centre, Bhadaur where he was given medical aid by PW-1 at about 11.30 p.m. and was thereafter referred to Civil Hospital, Barnala and on reaching Barnala he was pronounced dead by Dr. Ravinder Bansal at about 1.00 a.m. as has been mentioned in the informatory chit sent to the Police. An entry in this regard was also made in the despatch register regarding sending of the information Ex.PB to SHO Barnala. Thereafter PW-8 Darshan Singh SI, SHO Police Station Bhadaur reached Civil Hospital Barnala alongwith ASI Nazar Singh and recorded the statement Ex.PF of Avtar Singh PW-4 as the occurrence in this case had taken place during night time and the deceased was first rushed to Community Health Centre, Bhadaur and thereafter to Civil Hospital, Barnala. Therefore, the anxiety of his close relatives was to provide him medical aid at the earliest and hence he was first rushed to Community Health Centre, Bhadaur and then to Civil Hospital, Barnala. Hence, there is no delay in lodging the FIR in this case.

It has next been contended by the counsel for the appellant that as per PW 3 Dr. Rajinder Singh Grewal, SMO, Civil Hospital, Barnala who conducted the post mortem examination on the dead body of the deceased found that the stomach of the deceased was healthy and contained 250 gms.

of semi digested food material, whereas PW-5 Gurjant Singh stated that the deceased had not taken any meal on that day and had left the house at 7.00 p.m. On the basis of above, it is argued that if the deceased had not taken his meals then how could semi digested food be found. It is contended that story of the prosecution is absolutely concocted.

In response to the contentions raised by the counsel for the appellant, learned counsel for the State has stated that PW-4 Avtar Singh and PW-5 Gurjant Singh have categorically averred in their respective statements that they have seen the occurrence and as such they are the eye witnesses to the said incident. It has further been argued that the motive behind the whole incident was that the the deceased had illicit relations with the wife of the appellant-accused and for this reason the deceased was murdered by the appellant-accused. This fact has also been corroborated by PW-5 Gurjant Singh in his statement. Learned counsel has further relied upon Ex.PN and Ex.PT, i.e. the report of Chemical Examiner and the report of Serologist which clearly proves that the sample of blood stained earth collected from the spot bears human blood. Learned counsel has further argued that vide Ex.PH, the appellant-accused Balwinder Singh confessed the concealment of the said Ghotna with which he caused injuries to the deceased and also got recovered the same which was blood stained from one side vide Ex.PJ.

We have heard both the counsel at length.

The contention of the counsel for the appellant that the stomach of the deceased was healthy and contained 250 gms. of semi digested food material is without any merit. It is common knowledge that in villages sometimes people have their meals quite early or immediately after Sun set

and hence it cannot be stated that the deceased had not taken any meal.

It has also been contended that if the deceased was crying loud at 11 O'clock at night because of the injuries he was receiving at the hands of the accused then his cries would have automatically attracted some independent persons from the neighbouring houses, but, no person from the neighbourhood has been examined.

This argument of the counsel for the appellant is also without merit as in such like cases no independent person comes forward to depose against the culprits. Merely, because no independent witness has come forward to depose in this case would not be a valid ground to discard the testimony of Avtar Singh PW4 and Gurjant Singh PW5.

Avtar Singh PW4 has given a graphic account of the manner in which Beant Singh was killed. It has been stated by him that he and his uncle Gurjant Singh PW-5 went in search of the deceased Beant Singh at about 11.00 p.m. as Beant Singh had not returned home and when they reached near the house of the accused they heard cries of 'Marta-Marta'. The main door of the house was open and one electric bulb was lit. He found Beant Singh lying on the ground and he was shouting and the accused Balwinder Singh was inflicting injuries on him with a small wooden log (Ghotna). While the accused was hitting him on his head, Joginder Kaur was holding the legs of Beant Singh. When he raised alarm the accused ran away. The testimony of this witness has not been shaken in any manner in the cross-examination. The motive behind the death of Beant Singh was that the accused Balwinder Singh was suspecting Beant Singh of having illicit relations with his wife. The statement of PW-4 Avtar Singh has fully been corroborated by PW-5 Gurjant Singh, who is the brother of the

deceased. Apart from the above after the accused was arrested, he got recovered the weapon of offence which was a 'Ghotna'. The wooden log which was stained in blood was made into a parcel and taken into possession vide memo Ex.PJ. The earth from the place of occurrence was also lifted and was sent to the Chemical Examiner who opined that there was human blood on the wooden log as well as on the blood stained earth. This also leads credence to the case of the prosecution that Beant Singh was killed in the house of the accused Balwinder Singh and the weapon used in that offence was the 'Ghotna'. In view of the aforementioned facts, the ocular version given by PW-4 Avtar Singh and PW-5 Gurjant Singh has been fully corroborated by not only the medical evidence but also by the recovery of weapon as well as the report of the Chemical Examiner regarding the lifting of the blood stained earth which clearly pin-points not only the place of occurrence but also the weapon used for murdering Beant Singh. The weapon was also recovered at the instance of the accused.

In view of the aforementioned reasons, we are of the considered opinion that the prosecution has been successful in bringing home the guilt of the accused Balwinder Singh. It is held that Balwinder Singh had committed the murder of Beant Singh and hence has rightly been convicted under Section 302 IPC and sentenced to undergo imprisonment for life. We find no merit in this appeal which is accordingly dismissed and the sentence as imposed by the trial Court is upheld.

(ASHUTOSH MOHUNTA)
JUDGE

October 29, 2007
Gulati

(MOHINDER PAL)
JUDGE